

EXHIBIT D

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

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In Re:

Case No:

RESIDENTIAL CAPITAL, LLC, et. al.,

12-12020 (MG)

Debtors.

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DEPOSITION OF FRANK SILLMAN

New York, New York

November 20, 2012

9:35 a.m.

Reported by:
ERICA L. RUGGIERI, RPR
JOB NO: 27687

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4 November 20, 2012
5 9:35 a.m.
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9 Deposition of FRANK SILLMAN,
10 held at the offices of Kramer, Levin,
11 Naftalis & Frankel, 1177 Avenue of the
12 Americas, New York, New York, pursuant
13 to Notice, before Erica L. Ruggieri,
14 Registered Professional Reporter and
15 Notary Public of the State of New
16 York.
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2 Am I right when you refer to
3 prime, jumbo, Alt-A and subprime, those
4 labels as you understand them generally
5 apply to first lien loans?

6 A. Yes.

7 Q. And then HELOC is a form of
8 second lien loan?

9 A. In most cases, not always.

10 There are first mortgage HELOCs but
11 predominantly I believe the HELOCs are
12 second mortgages.

13 Q. And in your experience do Alt-A
14 and subprime mortgage loans tend to yield
15 higher rep and warranty breaches than
16 prime jumbo? And I'll refer you to
17 paragraph 58 of your declaration if you
18 want to look at that. I'm going to object
19 to the form of the question as vague and
20 ambiguous?

21 A. Can you restate the question for
22 me.

23 Q. In your experience do Alt-A and
24 subprime mortgages tend to yield higher
25 rep and warranty breaches than prime jumbo

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2 mortgages?

3 A. They tend to yield higher
4 alleged rep and warrant breaches.

5 Q. And how much higher, can you
6 quantify that at all?

7 A. I don't have the numbers in
8 front of me to be able to give you any
9 type of percentage differences.

10 Q. Suppose you were asked by your
11 client to quantify that. Could you do
12 that and how would you go about it?

13 A. I wouldn't be able to quantify
14 it without looking at and doing more work
15 on what the actual experience is. I do
16 know that it is -- my experience has been
17 it's higher, there's been a higher rate of
18 alleged rep and warrant breaches, but I
19 couldn't put a percentage on it.

20 Q. Are there any publications that
21 address that to your knowledge?

22 A. There may be that address it.
23 I'm not aware of them.

24 Q. Do you know if anybody has
25 attempted to address that issue on an

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2 Q. Correct. And suppose now we
3 modify the question so we are not asking
4 about alleged breach rates but instead
5 we're asking about what you call loss
6 share rates. Could that question be
7 addressed using publicly available data?

8 A. There have been some expert
9 reports that you can discern the loss
10 share rates from. The issues with that is
11 the underlying data you don't have access
12 to so I can't opine on whether or not
13 that's comparative to the debtors proposed
14 settlement because the data behind those
15 reports are not publicly available.

16 Q. And which expert reports are you
17 referring to?

18 A. The Bank of America expert
19 report and the Lehman expert declaration.

20 Q. Now, I'm not asking you about
21 discerning loss share rates as to any
22 particular seller but rather as to
23 industry averages. Is there publicly
24 available data from which one could reach
25 meaningful conclusions about average

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2 industry loss share rates?

3 A. On a product by product basis?

4 Q. Yes.

5 A. I'm not aware of any credible
6 sources that I have been able to evaluate
7 their underlying data that provide that
8 information.

9 Q. And now let me ask the same
10 question but as to vintages. Is there
11 publicly available data from which one
12 could reach meaningful conclusions about
13 how loss share rates varied depending on
14 the loan's vintage?

15 A. Again, I'm not aware of any data
16 that's available that you can reach
17 credible conclusions and that I have been
18 able to view the underlying data behind
19 that.

20 Q. In your -- strike that.

21 So now let's turn away from
22 industry averages and turn back to your
23 personal experience. In your personal
24 experience is the vintage of a loan a
25 factor that can affect the likelihood of a

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2 put back?

3 A. Yes. There is some correlation
4 between the vintage of the loan and the
5 potential for an alleged rep-warrant
6 breach.

7 Q. What correlation have you
8 observed?

9 A. There's a segment of loans
10 originated from 2005 to 2007 that tended
11 to have higher alleged breach rates in the
12 work that I have done for my clients.

13 Q. I want to understand what you
14 said. You referred to a segment of loans
15 originated from '05 to '07. Are you
16 saying that loans originated during that
17 period generally tend to have higher
18 alleged breach rates in your experience?

19 MR. RAINS: Objection.

20 Misstates the witness's testimony.

21 MR. BENTLEY: I'm trying to
22 understand it.

23 A. Loans originated in that period
24 may have higher alleged breach rates or
25 reps and warrant violations than loans

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2 this paragraph is what I'm going to focus
3 on. It says, "I was asked to provide an
4 independent assessment of the total
5 allowed claim as defined in the RMBS Trust
6 Settlement Agreements and opine as to its
7 reasonableness."

8 Do you see that?

9 A. Yes.

10 Q. And the total allowed claim,
11 that's \$8.7 billion?

12 A. Yes.

13 Q. Who first contacted you about
14 this matter?

15 A. Jen Battle.

16 Q. When did she contact you?

17 A. I believe it was early May but,
18 you know, I'm not positive as to the date.
19 But that's around the time.

20 Q. She contacted you after the
21 debtors had entered into the RMBS Trust
22 Settlement Agreement?

23 A. Yes.

24 Q. And I can tell you that that
25 agreement was executed on May 13th.

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2 A. Okay.

3 Q. And the debtors filed bankruptcy
4 the next day.

5 When she contacted you, had the
6 debtors filed bankruptcy?

7 A. Contacted me to discuss
8 retaining me for this expert work?

9 Q. When she contacted you to
10 discuss this expert work the first time.

11 A. You know, I don't recall.

12 Because we were an ongoing -- we were
13 doing ongoing work and then they suspended
14 that work, I don't recall when. I believe
15 it was -- we didn't have any discussions
16 regarding this potential work until after
17 they filed bankruptcy but I don't recall
18 exactly.

19 Q. Turning back to the sentence I
20 quoted a moment ago. The opinion you were
21 asked to provide was as to whether or not
22 the total allowed claim was reasonable; is
23 that correct?

24 A. Yes.

25 Q. So you were not asked to come up

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2 said it in the paragraph.

3 Q. So is it fair to say you are not
4 opining as to whether any of the claims
5 have legal merit?

6 A. Whether they would be able to
7 prove breaches of reps and warrants, yeah,
8 under the governing agreements.

9 Q. Or prove the requirements of put
10 back?

11 A. Correct.

12 Q. And by the way, you don't claim
13 to have any expertise in that issue, do
14 you?

15 MR. RAINS: Objection, vague and
16 ambiguous.

17 A. Which area is that?

18 Q. Whether put back is legally
19 required?

20 A. I didn't render any legal -- I
21 don't have any legal training and didn't
22 provide any legal recommendations under
23 this work.

24 Q. And you don't claim to have the
25 expertise needed to provide legal

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2 opinions, right?

3 A. Correct.

4 Q. And you are not expressing a
5 view, I take it, as to whether any of the
6 debtors' legal defenses have merit?

7 A. Correct.

8 Q. And you are also not expressing
9 a view as to whether the facts relating to
10 any of the loans in the pool being settled
11 would legally warrant put back?

12 A. Yeah. I'm not making a legal
13 assessment.

14 Q. Am I correct you've made no
15 attempt to determine the, what portion of
16 the loans in the pool actually breach reps
17 and warranties?

18 A. The work that I'm depending on
19 or relying on is the repurchased, GSE
20 repurchase rate work that was done between
21 Fannie, Freddie and the debtor where they
22 reviewed thousands of loans over a number
23 of years and looked at the actual loan by
24 loan file review and availed themselves to
25 the defenses of the governing agreements

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2 or any other legal arguments as part of
3 that process. So it's that work and the
4 results of that work that's incorporated
5 in my work, in my declaration.

6 Q. I understand you are drawing
7 inferences from the debtors' put back
8 history with the GSEs, among other things?

9 A. Correct.

10 Q. So I just want to be clear, am I
11 correct you haven't looked at any one loan
12 within the pool that's being settled to
13 try to reach a view or express an opinion
14 as to whether that loan actually breaches
15 any reps and warranties?

16 A. We have not completed our loan
17 level review work. And I'm relying on the
18 thousands of loans that went through the
19 debtors' repurchase process as the basis
20 for my original declaration.

21 Q. So I think I'm hearing the
22 answer to my question but I just want to
23 be clear. In your June 11 declaration you
24 are not expressing any opinion as to
25 whether any particular loan breaches any

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2 reps and warranties?

3 MR. RAINS: Objection. Vague

4 and ambiguous. Asked and answered.

5 A. I utilized the repurchase work
6 the debtor did with the GSEs to form the
7 basis for my original declaration.

8 Q. And in reaching the conclusions
9 in your initial declaration you didn't
10 look at any individual loan file in the
11 pool that's being settled?

12 A. I relied on the thousands of
13 loans that were reviewed by the debtor as
14 part of their process prelitigation.

15 Q. With respect, Mr. Sillman, I
16 don't think you answered my question.

17 MR. BENTLEY: Let me ask the
18 reporter to read it back.

19 MR. RAINS: I think you answered
20 the question. It's been asked and
21 answered.

22 MR. BENTLEY: You know, Darryl,
23 it's a yes or no question and I got a
24 nonanswer.

25 Read it back, please.

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2 (Record read.)

3 MR. RAINS: Same objections.

4 A. I relied on the GSE repurchase
5 work that the debtor did with Fannie and
6 Freddie.

7 Q. To date have you looked at any
8 loan file for any of the loans within the
9 pool that's being settled?

10 A. We are in the process of
11 reviewing the loan files.

12 Q. Have you yet looked at any loan
13 files?

14 MR. RAINS: You mean him
15 personally or Fortace?

16 Q. Let's break it into pieces.

17 Have you personally looked at any loan
18 file?

19 A. I have not looked at the loan
20 files.

21 Q. Prior to your signing your
22 June 11 declaration, did anybody at
23 Fortace look at any of the loan files for
24 the loans being settled?

25 A. I relied on, we relied on, the

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2 work that the debtor did with the GSE
3 repurchases in forming the assumptions and
4 conclusions in my original declaration.

5 Q. So that's a no?

6 A. I relied on --

7 MR. BENTLEY: Read back my
8 question.

9 Q. It's a very simple factual
10 question. I'm not asking you what you
11 relied on. I'm asking you whether you
12 looked at any loan files?

13 MR. BENTLEY: Read it back,
14 please.

15 (Record read.)

16 MR. RAINS: Objection, vague and
17 ambiguous. Asked and answered.

18 A. I relied on the work that was
19 done by the debtor as part of their GSE
20 repurchase for the conclusions and
21 assumptions made in my original
22 declaration.

23 Q. And you didn't look at any loan
24 files?

25 A. I relied on the GSE repurchase

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2 work.

3 Q. Did that involve looking at any
4 loan files?

5 A. It revolved relying on the loan
6 file reviews that the debtor performed.

7 Q. Is there a reason you are
8 resisting answering a simple question?

9 MR. RAINS: Objection.

10 Argumentative. Asked and answered.

11 MR. BENTLEY: It's not asked and
12 answered for Christ's sake, Darryl.

13 Read it back.

14 MR. RAINS: Of course it has.

15 It's been asked 15 times and --

16 MR. BENTLEY: Is the answer no?
17 Because I sure can't tell what the
18 answer is.

19 MR. RAINS: I think his answer
20 is very clear.

21 MR. BENTLEY: The answer is he
22 did something else, it's not whether
23 he did this or not.

24 MR. RAINS: That's his answer.

25 You don't like his answer but it's his

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2 answer.

3 MR. BENTLEY: I'm fine with his
4 answer, he just hasn't answered my
5 question.

6 Can you read it back, please.

7 MR. RAINS: Let's do this, let's
8 take a quick break.

9 MR. BENTLEY: You know what, I
10 want an answer to my question before
11 you speak --

12 MR. RAINS: I'm going to talk to
13 him about his answer to your question.

14 MR. BENTLEY: I object. You are
15 not supposed to talk to the witness
16 while a question is pending.

17 (Whereupon, there is a recess in
18 the proceedings.)

19 MR. RAINS: I think we have
20 succeeded in clearing up some of the
21 ambiguities and confusion caused by
22 your question. Why don't you put the
23 question to him again.

24 Q. I know it's very confusing but
25 I'll state it again. In connection with

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2 forming the opinions expressed in your
3 June 11 declaration, did you or any of
4 your colleagues look at any of the files
5 for the loans in the pool being settled.

6 A. For the, my original declaration
7 I relied on the work that was done by
8 ResCap and the repurchase activity. We
9 are now looking at loan files. We are
10 currently looking at loan files.

11 Q. So let's just unpack what you
12 just said. You relied on the work that
13 was done by ResCap. What work are you
14 referring to?

15 A. To GSE and private label
16 repurchase activity work ResCap did.

17 Q. Understood. But was that as to
18 any of the loans that are in this pool
19 that's being settled?

20 A. There may be in the private
21 label securities work loans that are
22 included in this settlement. The vast
23 majority of the loans were related to
24 their GSE originations.

25 Q. And none of the GSE deals

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2 overlap in any way with this settlement,
3 right?

4 A. Correct.

5 Q. Were you relying, when you
6 prepared this report, on any work that RFC
7 had done in looking at the loans that are
8 part of this settlement?

9 A. Yes. We did review some
10 information regarding their private label
11 securitization repurchase work. What we
12 found, I think there's an exhibit, that
13 the vast majority of those repurchase
14 demands were unresolved.

15 Q. So I'm going to return to that.
16 I know what you are referring to. Putting
17 aside any loan reviews that RFC may have
18 done in connection with its prepetition
19 put back experience, did you or any of
20 your colleagues look at any loan files in
21 connection with the work that went into
22 your June 11 report?

23 A. We relied on the company's work
24 for the information in the original
25 declaration and we are now looking at loan

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2 files that are contained within the 392
3 trusts.

4 Q. And when you say the company's
5 work, are you referring to anything other
6 than the work the company did prepetition
7 in connection with its prepetition put
8 back negotiations?

9 A. Yeah. It was prepetition work.

10 Q. In connection with -- done by
11 the debtor in connection with its
12 prepetition put back experience?

13 A. Yes.

14 Q. And no other review of loan
15 files went into your, the conclusions
16 expressed in your June 11 declaration?

17 A. That's right.

18 Q. Okay. We are there. We got an
19 answer. Thank you. Let's move on.

20 A. I would say no additional loan
21 work.

22 MR. BENTLEY: I'm about to
23 change topics. If people want to take
24 a break, this is fine or we can keep
25 going.

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2 what?

3 A. Where they reviewed the loan
4 file internally, possibly as part of a
5 post funding QC process where they
6 identified loans that they felt met the
7 repurchase standard and notified the
8 appropriate trustee or insurer.

9 Q. What is a post funding QC
10 process?

11 A. That's where lenders review a
12 sample of loans that close to see if there
13 are any underwriting compliance or other
14 errors in the origination process.

15 Q. And what's the -- do you have an
16 understanding as to what the debtors
17 purpose was in doing that?

18 A. It's standard in the industry to
19 select a group of loans post closing.
20 One, it's a requirement for the GSEs to do
21 that and it's typically because the GSEs
22 make up such a large percentage of their
23 volume, it's typically utilized for all
24 types of loans to review the origination
25 process.

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2 Q. And is there a reason the debtor
3 does this for PLS?

4 MR. JURGENS: Objection to form.

5 MR. RAINS: Calls for
6 speculation. Go ahead.

7 A. I'm not aware of, you know, why
8 they chose these loans and what their
9 policies are for QC'ing loans that go into
10 PLS securities.

11 Q. Did you or your team make any
12 effort to try to understand the nature of
13 the debtors practices and procedures in
14 that regard?

15 MR. RAINS: Objection, vague and
16 ambiguous.

17 A. We discussed when they provided
18 this data what these various categories
19 were. And they could not tell us under
20 what initiative these voluntary loans were
21 selected. So their records -- they
22 explained to us their records didn't
23 reflect you how the loans were created as
24 voluntary demands.

25 Q. Who participated in these

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2 discussions?

3 A. I did, Michelle Minier and Jeff
4 Cancelliere.

5 Q. Who is Mr. Cancelliere?

6 A. He works for the debtor.

7 Q. Do you know what he does there
8 or what he did at the time of these
9 discussions?

10 A. Yeah. He -- my understanding
11 was he was involved in the risk group for
12 the company.

13 Q. So did he, to your knowledge,
14 did he participate in the post funding QC
15 process?

16 A. That -- in my conversations with
17 him that wasn't my understanding. I
18 interfaced with him in this regard. He
19 was the person that collected this
20 information for us at the company.

21 Q. So were you able to ascertain
22 what portion of the loans that you
23 described as voluntary, were reviewed as
24 part of the post funding QC process?

25 MR. JURGENS: Objection to form.

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2 A. I answered that already. In
3 that they did not have the data available
4 to ascertain under what program these
5 voluntary demands were developed.

6 Q. Did you have any understanding
7 what other programs may have given rise to
8 these voluntary repurchases?

9 A. We had some discussions around
10 trying to better understand the types of
11 loans that would be included in the
12 voluntary. And Jeff was not able to give
13 us any data around how these were created.

14 Q. And just so we are clear. I
15 meant to ask you about other programs, not
16 types of loans. Do you have any
17 understanding of what programs other than
18 post funding QC programs led to these
19 voluntary repurchases?

20 MR. SHEEREN: Objection to form.

21 A. In my conversations with him
22 they didn't discuss the types of programs
23 that led to these voluntary because the
24 data was not available. So they weren't
25 able to speak to how these loans came to

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2 be categorized as voluntary.

3 Q. And do you know if it would be
4 possible now to reconstruct or come up
5 with that information?

6 A. I don't know if anything has
7 changed. They were not able to provide
8 that information at the time that we
9 requested this data.

10 Q. Did you reach a conclusion about
11 whether the voluntary repurchases had any
12 bearing on the issues you were analyzing?

13 A. We looked at all of the PLS
14 demands including the voluntary in
15 developing the conclusions that we had in
16 my report.

17 Q. What weight -- strike that.

18 Table 2 addresses nonvoluntary
19 repurchases only. Why did you isolate out
20 the nonvoluntary?

21 A. I wanted to understand better
22 the state of the repurchase demands that
23 were made by trustees or insurers.

24 Q. Am I right the only difference
25 between the Table 1 box relating to

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2 MR. RAINS: He said put back
3 demands.

4 Q. Let me try it again because my
5 question wasn't very clear. You've
6 computed that the debtors -- sorry, that
7 the trusts -- let me start again. You've
8 computed that the loans subject to the
9 proposed settlement have losses,
10 liquidated losses to date of about
11 \$30 billion, correct?

12 A. Correct.

13 Q. And by the way, by liquidated
14 losses what do you mean?

15 A. It means when there's a loss
16 that's passed on to the trust when the
17 loan is liquidated.

18 Q. So are all of those losses on
19 account of either foreclosure or some
20 other sale?

21 A. Short sale, yes. There's a
22 number of categories that would consider
23 the loan liquidated. And any losses
24 associated with that are reported as
25 liquidated losses.

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2 Q. So it would be a sale in
3 satisfaction of the mortgage?

4 A. I'm not sure that I'm the
5 expert. Mortgages work differently in
6 each of the states. When the property is
7 liquidated, the losses associated with
8 that are passed on to the trust.

9 Q. So let me just show you your
10 report so we don't have to go back and
11 forth on this. Look at paragraph 25 of
12 your initial declaration. And item A in
13 the first sentence refers to, "The actual
14 losses that are incurred when a loan is
15 foreclosed and sold through a short sale,
16 REO or other final disposition."

17 Do you see that?

18 A. Yes.

19 Q. And that's what you've defined
20 as the actual liquidated loss?

21 A. Yes.

22 Q. Okay. And do you have any way
23 of knowing whether after a liquidation of
24 that sort the trust would still hold the
25 mortgage?

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2 A. That would be a --

3 MR. JURGENS: Objection to form.

4 MS. PATRICK: Objection to form.

5 A. -- a legal question that may be
6 discussed in the governing agreements but
7 outside the scope of what -- what I looked
8 at for my declaration.

9 Q. Okay. Fair enough. But you've
10 computed that the debtors -- the
11 liquidated losses on the loans in the
12 trusts to date are approximately
13 \$30 billion?

14 A. That's the information that I
15 received from Intex and LP, loan
16 performance.

17 Q. And does Table 2 of Exhibit 7
18 show that, tell you the dollar value of
19 put back demands made against the debtors
20 with respect to these trusts from late
21 2007 until the petition -- until May 2012?

22 A. I'm not sure -- you are asking
23 the detailed schedule information?

24 Q. Exhibit 7, the cover page.

25 A. Oh, the cover page.

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2 this next step in estimating the loss
3 share rate ranges.

4 Q. So all of your calculations on
5 pages 16 to 23, the upshot of those
6 calculations is the loss share rate,
7 correct?

8 A. Yes. The result of the work
9 that's done starting on page 16, paragraph
10 44 and ending on page 23, paragraph 66.

11 Q. There's a number of different
12 components, retrade, agree rate and audit
13 rate and demand rate. But the purpose of
14 all of those is to come up with the -- the
15 collective result of all of those is the
16 loss share rate?

17 A. Right.

18 Q. Now, going back to paragraph 6
19 in the second sentence describing loss
20 share rate, you describe loss share rate
21 as, "The percentage of estimated lifetime
22 losses that the debtors might agree to
23 share with the trusts."

24 Do you see that?

25 A. Yes.

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2 Q. So was it deliberate on your
3 part to use the word "might" rather than
4 would?

5 A. What I was developing -- what I
6 developed for this is a range of
7 reasonable loss share rates. And whether
8 or not the debtor would agree to a loss
9 share rate ultimately agree to a loss
10 share rate or an allowed claim that you
11 could calculate a loss share rate is
12 something for the others to decide, not me
13 to impose by using the word "would."

14 Q. For example, your calculations
15 are all predicated on the assumption that
16 a breach of rep and warranties can be
17 proved against the debtors as a legal
18 matter, right? We talked about that
19 earlier.

20 A. Let me get to -- what paragraph
21 are you referring --

22 Q. 5. Third sentence.

23 MR. RAINS: What was the
24 question again?

25 Q. You assume for purposes of your

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2 were referring to a few minutes ago?

3 A. Yes.

4 Q. The calculations you used to
5 derive the audit rate ranges shown in the
6 table on paragraph 53 of your report?

7 A. Right. The total average of
8 65 percent and 69 percent.

9 Q. Okay. But how did you compute
10 each of the individual ranges shown on
11 this table? For example, the first line,
12 trusts, liquidated loans, a range of 70 to
13 75 percent. How did you compute those
14 numbers?

15 A. That was based on my
16 professional experience with audit rate
17 percentages.

18 Q. So do you compute it or did you
19 just -- does that number -- is that number
20 the product of any calculations?

21 A. It's the product of my
22 professional experience. There's not an
23 additional calculation.

24 Q. You just came up with that
25 number?

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2 A. I didn't just come up with it.

3 It's based on my professional experience.

4 Q. How did you come up with it?

5 MR. RAINS: Objection. Asked

6 and answered.

7 Q. How did you pick 70 percent
8 rather than 60 or 80 percent?

9 MR. RAINS: Asked and answered.

10 A. I came up with it based on my
11 professional experience. I developed a
12 range to take into consideration the
13 variability of each one of these
14 categories.

15 Q. Did you compute any of the
16 numbers shown in paragraph 53 other than
17 the average that's shown at the bottom of
18 the table?

19 A. The assumptions for each
20 wouldn't delinquency buckets were based on
21 my professional experience.

22 Q. But you didn't perform any
23 calculations to derive any of these
24 numbers?

25 MR. RAINS: Which numbers?

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2 MR. BENTLEY: All of the numbers
3 in the table in paragraph 53 other
4 than the total average numbers shown
5 on the last line.

6 A. The numbers for each of those
7 are assumptions based on my professional
8 experience. So I developed those
9 assumptions and input them into the model.

10 Q. How did you develop them? Were
11 there any steps that went into the
12 development?

13 A. Based on my professional
14 experience for these categories of loans
15 that's how I developed the assumptions.

16 Q. Did you start with the total
17 average range of 65 to 69 and then back
18 into the component ranges?

19 A. I did not.

20 Q. And can you shed any more light
21 on how you came up with the various ranges
22 shown here, other than the total average
23 range?

24 A. Based on my professional
25 experience.

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2 Q. It wasn't a quantitative
3 calculation?

4 A. It wasn't a -- you are asking me
5 is this a product of a mathematical
6 equation?

7 Q. Correct.

8 A. It was -- these individual
9 assumptions were not the product of an
10 additional mathematical equation. They
11 were based on my professional experience.

12 Q. And there's no backup to these
13 numbers?

14 A. There is no -- there's no other
15 data to support these numbers other than
16 my professional experience.

17 Q. If I ask you the same questions
18 about the numbers shown in the table on
19 paragraph -- in paragraph 56 of your
20 report are your answers the same?

21 MR. RAINS: Objection. Vague
22 and ambiguous. Compound.

23 MR. BENTLEY: You can walk
24 through all these questions again,
25 Darryl.

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2 A. I followed the same process
3 based on my professional experience in
4 determining the assumptions for each of
5 the lower and higher ranges in paragraph
6 56.

7 Q. Did you prepare any calculations
8 that went in to the derivation of these
9 numbers, that is on paragraph -- in
10 paragraph 56?

11 A. There aren't any additional
12 calculations to derive the assumptions
13 other than the calculations for the total
14 average.

15 Q. Let me try to be clear. The
16 total average numbers you derived from the
17 numbers above it in -- in the table?

18 A. And they are weighted against
19 the estimated trust lifetime losses. So
20 they are a function of a calculation in
21 the model.

22 Q. But each of the numbers other
23 than the total average has no calculation
24 backing it up?

25 A. That's right. It's an

230

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2 assumption based on my professional
3 experience.

4 Q. And there's no backup documents
5 or data supporting these numbers?

6 A. That's correct.

7 Q. Let's move on to breach rate.

8 And as we discussed before, breach rate is
9 simply the product of audit rate and
10 demand rate, correct?

11 A. Correct.

12 Q. So the derivation of this was
13 simply math?

14 A. That's correct. And then again
15 weighted against the estimated trust
16 lifetime losses for the averages.

17 Q. Now, in paragraphs 57 and 58,
18 you refer to the breach rates used in the
19 BofA expert report and the Lehman expert
20 report, right?

21 A. Yes. I discussed them.

22 Q. So you attempted to determine
23 what breach rate had been used in
24 connection with the BofA settlement,
25 right?

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2 an expert, a loss share rate, excuse me.

3 We calculated that by taking the estimated
4 losses divided by their higher and lower
5 range in the settlement columns. I
6 believe that was in our spreadsheet. We
7 can take a look at that.

8 Q. Maybe this will help you. Did
9 you -- to compute the 14 percent loss
10 share rate shown in your table in
11 paragraph 65 did you derive that from the
12 36 percent breach rate and the 40 percent
13 success rate shown on page 8 --

14 A. Yes.

15 Q. -- of the BofA expert report?

16 A. Yeah, the same amount.

17 Q. You simply multiplied 36 percent
18 by 40 percent?

19 A. Yes, I believe that's the case.

20 Q. And to get your Lehman agree
21 rates --

22 A. I'm sorry.

23 Q. I have got to review that. So
24 I'm going to ask you now about how you
25 derived the breach rate, agree rate and

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2 expert report?

3 A. Yes.

4 Q. And turn now to paragraph 65 of
5 your report, which shows certain Lehman
6 loss share rate assumptions. Did you
7 derive those by simply multiplying your
8 Lehman breach rate by your Lehman agree
9 rate?

10 A. Yes. They are not mine but,
11 yes, from the --

12 Q. Understood.

13 A. From Lehman's, yes.

14 Q. The numbers you put in your
15 tables for the Lehman breach rate and
16 agree rate?

17 A. Yes.

18 Q. Did you know whether the ResCap
19 board of directors, when it approved the
20 settlement, considered the BofA settlement
21 and the Lehman settlement?

22 A. I don't have any information
23 about what the board considered as part of
24 the settlement.

25 Q. We will move on.

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2 anything relating in any way to agree
3 rates on page 2 of this document?

4 A. No. That column referred here
5 as formula column H is where I calculate
6 the overall trust agree rate assumptions
7 for the lower and higher ranges.

8 Q. But nothing in this document
9 shows how you got to the lower and higher
10 agree rate numbers shown for the various
11 buckets?

12 A. That's correct. Those were
13 based on my professional experience with
14 agree rates for these buckets adjusted for
15 the repurchase experience the debtor had
16 and the higher agree rates than the
17 industry as a whole for their GSE
18 repurchases.

19 Q. Let's take it step by step. I'm
20 going to ask you more about Exhibit 15 in
21 a moment. But just to jump to the bottom
22 line, does Exhibit 15 show how you
23 computed the 41 to 47 percent agree rate
24 range?

25 A. This was a validation step that

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2 A. I did not as part of this
3 analysis.

4 Q. Did you attempt to quantify the
5 vintages of their loans as part of this
6 analysis?

7 A. The vintages were similar
8 vintages to the vintages, the same time
9 period majority from 2005 to 2007.

10 Q. Did you attempt to quantify how
11 the vintages broke out as between the
12 different years within that time frame?

13 A. I did not do the further
14 analysis. I didn't feel that was
15 necessary as part of my assumption
16 development.

17 Q. Did you make any attempt to
18 compare how the reps and warranties
19 governing those loans compared to the reps
20 and warranties in the governing agreements
21 for the debtors?

22 A. In general I did do that.

23 That's one of the discounts applied in my
24 Exhibit 15 document.

25 Q. Okay. So we will turn back to

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2 that in a moment. And over what years
3 were the put back demands and put back
4 responses that -- of the three clients you
5 are referring to?

6 A. And the IndyMac experience.

7 They related to originations primarily
8 from 2005 to 2007.

9 Q. I'm actually asking a different
10 question which is when were the put back
11 demands? How long after origination?

12 A. They were 2008 -- let me step
13 back. IndyMac they were 2006 through
14 2008. At my Fortace clients they were
15 2009 through part of 2012.

16 Q. And did you attempt to -- did
17 you give any consideration to the length
18 of time between the origination and the
19 put back demands in the client experience
20 that you were basing your opinion on?

21 A. I did not, with my experience
22 with, at IndyMac Bank and with my Fortace
23 clients, did not see any differences in
24 when the demand was presented and the
25 agree rates.

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2 Q. Did you make any attempts to
3 quantify the length of time between
4 originations and demands?

5 MR. JURGENS: Objection to form.

6 A. I didn't see that as a factors
7 that influenced the agree rates in the
8 work that I had been involved with.

9 Q. So you didn't do any such
10 calculation?

11 A. It was not included in my agree
12 rate calculation.

13 Q. Now, what were the agree rates
14 of these three clients that you are
15 referring to?

16 A. And IndyMac. They ranged in
17 general from a low of around 37 to a high
18 of 42 percent.

19 Q. One of the three clients was 37
20 and another was --

21 A. No. At different times the
22 agree rates, depending on who the demander
23 was, when the demands were made might
24 change how they negotiated and came to
25 agree rates. So in general I would see

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2 forming your conclusions, did you consult
3 any documents?

4 A. I did not consult any documents.

5 Q. You just knew those numbers by
6 memory?

7 A. I do know those numbers by
8 memory.

9 Q. This was the experience of three
10 clients. Were they sell side or buy side?

11 A. And IndyMac.

12 Q. Sure. Were the three Fortace
13 clients sell side?

14 A. Yes.

15 Q. How many sell side clients did
16 you have altogether who you advised on --
17 with respect to put back demands?

18 A. For what period? I mean, we had
19 clients come and go so.

20 Q. From '09 through this year.

21 A. Five clients.

22 Q. About five sell side clients?

23 A. Yes.

24 Q. Why did you pick these three and
25 not the other two?

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2 A. Just because of the volume of
3 work that we did for them or have done for
4 them is not significant. The three --

5 Q. The two --

6 A. Yeah. Two of the five we have
7 not done significant work for.

8 Q. Did you consider including your
9 buy side clients in doing this analysis?

10 A. Give me a second. Let me just
11 recall. The work we did for the buy side
12 was, in many cases, we did not receive
13 back the ultimate agree rate data for
14 those clients. The three clients I picked
15 were ones where I received back agree rate
16 feedback.

17 Q. Did you receive the ultimate
18 agree rate data for any of your buy side
19 clients?

20 A. I may have received agree rate
21 data for those clients but I'm not sure.

22 Q. Did you give any consideration
23 to including them in your analysis?

24 A. I did consider them in
25 determining my analysis but felt that the

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2 data from the three that I selected and my
3 IndyMac experience was more on point and
4 more robust than the information that was
5 provided to me.

6 Q. What was the basis for that
7 conclusion?

8 A. The amount of loans that we did
9 for them and the data that was provided to
10 us regarding the agree rates.

11 Q. That explains how you concluded
12 it was more robust. But how about more on
13 point?

14 A. They were sell side clients,
15 very similar in structure to ResCap.

16 Q. In what sense?

17 A. In that they sold
18 securitizations with Alt-A, subprime,
19 jumbo A loans.

20 Q. And that wasn't true of your buy
21 side clients?

22 A. Some of the buy side clients
23 sold whole loan to companies like ResCap.
24 Some didn't have as robust of a
25 correspondent or conduit business as

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2 shelf they may have changed.

3 Q. Did you perform any system --
4 did you attempt to review the reps and
5 warrants of those clients in any
6 systematic way?

7 A. I based it on my professional
8 experience and actual repurchase agree
9 rate experience with them in regards to
10 their reps and warrants.

11 Q. And are there -- is there any
12 work product that you or your team
13 generated reflecting your review of the
14 reps and warrants of these other clients?

15 A. There isn't any information that
16 I relied on that we did not provide to the
17 data room or in the exhibits. It's
18 confidential information. So we didn't
19 document any of the work. This was based
20 on my professional experience with the
21 Fortace clients.

22 Q. Let's just try to make sure we
23 have a clear record. Did you go back and
24 look at the reps and warrants of these
25 other clients for purposes of performing

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2 your analysis or did you instead simply
3 rely on your general experience in
4 representing those clients?

5 MR. RAINS: Or something else.

6 Tell him what you did.

7 A. I relied on my familiarity with
8 the reps and warrants from my other
9 clients in comparing them to the reps and
10 warrants in the governing agreements that
11 I reviewed.

12 Q. So you didn't conduct any rep
13 and warrant review of those other clients
14 for purposes of this analysis?

15 A. I didn't do any additional rep
16 and warrant review other than the rep and
17 warrant review that I explained to you
18 that I did.

19 Q. That you had done previously in
20 connection with your work for those other
21 clients?

22 A. Correct.

23 Q. And same question with respect
24 to IndyMac. Did you go back and look at
25 the reps and warrants for any IndyMac